

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17-BK-3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY,

Debtor.

PROMESA

Title III

No. 17-BK-4780-LTS

(Jointly Administered)

**URGENT MOTION OF THE
FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO
RICO FOR SUSPENSION OF CERTAIN CONFIRMATION DEADLINES**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19- BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

To the Honorable United States District Court Judge Laura Taylor Swain:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as sole Title III representative of the Puerto Rico Electric Power Authority (“PREPA” or the “Debtor”), pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² respectfully submits this urgent motion (the “Urgent Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), suspending certain deadlines established in the Solicitation Procedures Order,³ the Confirmation Procedures Order,⁴ and the Confirmation Hearing Procedures Order.⁵

Jurisdiction and Venue

1. The United States District Court for the District of Puerto Rico (the “Court”) has subject matter jurisdiction over this Urgent Motion pursuant to PROMESA Section 306(a).

2. Venue is proper in this district pursuant to PROMESA Section 307(a).

Background

3. On March 3, 2023, the Court entered the Solicitation Procedures Order, and on May 31, 2023, the Court entered the Confirmation Procedures Order, each of which establish

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

³ The “Solicitation Procedures Order” is the *Order (I) Approving Disclosure Statement, (II) Fixing Voting Record Date, (III) Approving Confirmation Hearing Notice and Confirmation Schedule, (IV) Approving Solicitation Packages and Distribution Procedures, (V) Approving Forms of Ballots and Voting and Election Procedures, (VI) Approving Notice of Non-Voting Status, (VII) Fixing Voting, Election, and Confirmation Deadlines, and (VIII) Approving Vote Tabulation Procedures* [ECF No. 3304]. Unless otherwise stated, all ECF Nos. shall refer to the docket in Case No. 17-4780.

⁴ The “Confirmation Procedures Order” is the *Third Amended and Restated Order Establishing, Among Other Things, Procedures and Deadlines Concerning Objections to Confirmation and Discovery in Connection Therewith* [Case No. 17-4780, ECF No. 3565].

⁵ The “Confirmation Hearing Procedures Order” is the *Amended Order Regarding Procedures for Hearing on Confirmation of PREPA Plan of Adjustment* [ECF No. 3759].

procedures and deadlines relating to the hearing (the “Confirmation Hearing”) to consider confirmation of the *Modified Second Amended Title III Plan of Adjustment of the Puerto Rico Electric Power Authority* [ECF No. 3296] (as it may be amended, supplemented, or modified, the “Title III Plan”) and set July 17-28, 2023 as the dates for the Confirmation Hearing.

4. During the Claim Estimation Hearing⁶ on June 8, 2023, the Oversight Board’s attorneys informed the Court the Oversight Board intended to certify a fiscal plan for PREPA (the 2023 PREPA Fiscal Plan) on June 16, 2023, one week later than its initial intended certification date of June 9, 2023. The Court ordered the Oversight Board to meet and confer with objectors to the Title III Plan and to file a joint status report by June 21, 2023 (the “Status Report”) “regarding the anticipated impact, if any, of the [2023 PREPA Fiscal Plan] on the confirmation proceedings and schedules, and a proposal for any changes that may be anticipated or requested.” June 8, 2023 Hrg. Tr. at 9:21-25.

5. On June 15, 2023, the Court entered the Confirmation Hearing Procedures Order, establishing further procedures and deadlines pertaining to the hearing to consider confirmation of the Title III Plan.

6. On June 17, 2023, the Oversight Board filed the *Informative Motion of the Financial Oversight and Management Board for Puerto Rico Regarding Extension to June 23, 2023 for Certification of 2023 PREPA Fiscal Plan* [ECF No. 3767] (the “Informative Motion”). Therein, the Oversight Board informed the Court that it was unable to responsibly certify the 2023 PREPA Fiscal Plan by its anticipated deadline of June 16, 2023 and committed to certifying the

⁶ The “Claim Estimation Hearing” is the June 6-8, 2023 hearing to determine the amount of the Bondholders’ Unsecured Net Revenue Claim, as defined in the *Opinion and Order Granting in Part and Denying in Part the Financial Oversight and Management Board for Puerto Rico’s Motion for Summary Judgment and the Defendant’s and Intervenor-Defendants’ Cross-Motion for Summary Judgment*, Adv. Proc. No. 19 00391-LTS, ECF No. 147.

2023 PREPA Fiscal Plan and identifying any necessary amendments to the Title III Plan on or before June 23, 2023. The Informative Motion also recognized that “it is likely the Oversight Board (and other parties) may seek to change the confirmation schedule based on these developments.” *Id.* at 3. Accordingly, the Informative Motion requested the Court extend the deadline to file the Status Report by one week, from June 21, 2023 through June 28, 2023.

7. On June 18, 2023, the Court entered the *Order Concerning Informative Motion of the Financial Oversight and Management Board for Puerto Rico Regarding Extension to June 23, 2023 for Certification of 2023 PREPA Fiscal Plan* [ECF No. 3768] (the “Order”), which, among other things, extended the Status Report deadline through June 28, 2023. The Order further directed the Oversight Board to meet and confer with counsel for objectors to the Title III Plan and to file a joint status report by 2:00pm on June 21, 2023 “concerning whether and to what extent the parties believe that confirmation-related dates and deadlines should be altered or suspended in advance of the Oversight Board’s Status Report.” *Id.* at 2.

8. On June 18, 2023, the Ad Hoc Group of PREPA Bondholders (the “Ad Hoc Group”), U.S. Bank National Association (the “Trustee”), Assured Guaranty Corp. and Assured Guaranty Municipal Corp. (together, “Assured”), and Syncora Guarantee Inc. (“Syncora,” and collectively with the Ad Hoc Group, Trustee, and Assured, “Bondholders”) filed the *Urgent Motion of the Ad Hoc Group of PREPA Bondholders, Assured Guaranty Corp., Assured Guaranty Municipal Corp., Syncora Guarantee, Inc., and U.S. Bank National Association as PREPA Bond Trustee to Suspend Upcoming Confirmation Deadlines due to the Oversight Board’s Delay in Certifying PREPA’s 2023 Fiscal Plan* [ECF No. 3769] (“Bondholders’ Urgent Motion”). Bondholders’ Urgent Motion sought an order suspending (i) the June 21, 2023 deadline for filing

witness lists, exhibit lists, and deposition designations, and (ii) the June 26, 2023 deadline for filing witness declarations.

9. On June 19, 2023, in response to Bondholders' Urgent Motion, the Court entered the *Order Suspending Certain Confirmation Deadlines* [ECF No. 3770], suspending the deadlines for filing finalized witness lists, exhibit lists, deposition designations, and witness declarations.

10. On June 20, 2023, consistent with the Order, counsel for the Oversight Board met and conferred with counsel for objectors to the Title III Plan and other parties in interest to discuss whether the confirmation schedule should be altered or suspended in advance of the June 28 Status Report.

Relief Requested

11. The Solicitation Procedures Order, the Confirmation Procedures Order, and the Confirmation Hearing Procedures Order set July 17-28 as the dates for the Confirmation Hearing, and establish multiple near-term deadlines in advance of the Confirmation Hearing.

12. In light of the Informative Motion and the Urgent Motion, the Court already has suspended the deadlines for filing finalized witness lists, exhibit lists, deposition designations, and witness declarations. *See* ECF No. 3770.

13. During the June 20 meet and confer, counsel for the Oversight Board and the other parties in interest agreed that, given the uncertainty surrounding the plan amendments to be made in connection with certification of the 2023 PREPA Fiscal Plan, and whether additional discovery and expert reports will be necessary, all remaining confirmation-related deadlines should be suspended.

14. Accordingly, the Oversight Board requests the Court suspend all confirmation-related dates and deadlines, including the dates for the Confirmation Hearing.

15. The Oversight Board hopes and expects to move quickly towards confirmation following certification of the 2023 Fiscal Plan and its identification of necessary amendments to the Title III Plan. Accordingly, and as required by the Order, the Oversight Board and the parties in interest will meet and confer following certification of the 2023 PREPA Fiscal Plan. In the June 28 Status Report, the Oversight Board expects to be able to provide information concerning whether any resolicitations are required, and if so, when a proposed supplemental disclosure statement and full proposed amended plan can be filed, and the path forward towards confirmation.

Compliance With Case Management Procedures

16. Pursuant to Paragraph 1.H of the *Sixteenth Amended Notice, Case Management and Administrative Procedures* [Case No. 17-3283, ECF No. 20190-1], the Oversight Board hereby certifies that it has carefully examined the matter and concluded that there is a true need for an urgent motion; it has not created the urgency through any lack of due diligence; has made a bona fide effort to resolve the matter; has made reasonable, good-faith communications in an effort to resolve the issues that are being brought to the Court.

17. In advance of filing this Urgent Motion, the Oversight Board contacted counsel to (a) the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), (b) the Ad Hoc Group, (c) Assured, (d) Syncora, (e) the Trustee, (f) National Public Finance Guarantee Corp. (“National”), (g) the Fuel Line Lenders,⁷ (h) Unión de Trabajadores de la Industria Eléctrica y Riego, Inc., (“UTIER”), (i) Sistema de Retiro de Empleados de la Autoridad de Energía Eléctrica (“SREAEE”), (j) the Official Committee of Unsecured Creditors (the “Creditors’ Committee”),

⁷ The “Fuel Line Lenders” are comprised of Cortland Capital Market Services LLC, as successor administrative agent under a Credit Agreement, dated May 4, 2012, among PREPA, Scotiabank de Puerto Rico, and certain lenders, and SOLA LTD, Solus Opportunities Fund 5 LP, Ultra Master LTD and Ultra NB LLC, as lenders under a Trade Finance Facility Agreement, dated July 20, 2012, between PREPA and Citibank, N.A.

(k) the Ad Hoc Committee of National Claim Assignees (the “Ad Hoc Committee”), (l) PV Properties, Inc. (“PV Properties”), (m) Instituto de Competitividad y Sostenibilidad Economica de Puerto Rico (“ICSE”), and (n) Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc.-Enlace de Acción Climática, Comité Yabucoño Pro-Calidad de Vida, Inc., Alianza Comunitaria Ambientalista del Sureste, Inc., Sierra Club Puerto Rico, Inc., Mayagüezanos por la Salud y el Ambiente, Inc., Coalición de Organizaciones Anti Incineración, Inc., and Amigos del Río Guaynabo, Inc. (the “Environmental Advocacy Groups”), to determine whether they objected to the relief sought herein.⁸

18. Counsel for National, FLL, AAFAF, the Ad Hoc Committee, UTIER, SREAEE, ICSE, and PV Properties stated that they did not object to the relief sought herein. Counsel for the Creditors’ Committee stated as follows: “The Committee does not object to the relief sought in this Urgent Motion, but, for the avoidance of doubt, does not adopt any of the statements made by the Oversight Board in this Urgent Motion.” Bondholders’ counsel stated as follows: “Bondholders agree that the relief requested in this motion has been made necessary by the Oversight Board’s recent announcements regarding the 2023 Fiscal Plan and the Plan of Adjustment, and reserve all rights as to appropriate next steps. For the avoidance of doubt, Bondholders do not adopt any of the statements made by the Oversight Board in this Urgent Motion.” As of the filing of this motion, counsel for the Oversight Board had not received notice from counsel for the Environmental Advocacy Groups as to whether they object to the relief sought herein.

⁸ Counsel for the Oversight Board inadvertently omitted counsel from the Environmental Advocacy Groups from its initial correspondence. They were subsequently added to the email chain shortly before filing.

Notice

19. Notice of this Urgent Motion will be provided by facsimile, electronic mail transmission, regular mail and/or hand delivery to the following parties: (a) counsel to AAFAF, (b) counsel to the Ad Hoc Group, (c) counsel to Assured, (d) counsel to Syncora, (e) counsel to the Trustee, (f) counsel to National, (g) counsel to the Fuel Line Lenders, (h) counsel to UTIER, (i) counsel to SREAEE, (j) counsel to the Creditor's Committee, (k) counsel to the Ad Hoc Committee, (l) counsel to PV Properties, (m) counsel to ISCE, (n) counsel to the Environmental Advocacy Groups, (o) the Office of the United States Trustee for the District of Puerto Rico; (p) the indenture trustees and/or agents, as applicable, for bonds issued by PREPA; (q) the entities on the list of creditors holding the 20 largest unsecured claims against PREPA; (r) the statutory committees appointed in any of the Title III cases; (s) the Office of the United States Attorney for the District of Puerto Rico; (t) the Puerto Rico Department of Justice; (u) the United States Securities and Exchange Commission; (v) all parties filing a notice of appearance in this Title III case. The Oversight Board submits that, in light of the nature of the relief requested, no other or further notice need be given.

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WHEREFORE the Oversight Board respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting the Debtor such other and further relief as is just.

Dated: June 21, 2023
San Juan, Puerto Rico

Respectfully submitted,

/s/ Martin J. Bienenstock

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Exhibit A

PROPOSED ORDER

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et*
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Debtors.¹

PROMESA

Title III

No. 17-BK-3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY,

Debtor.

PROMESA

Title III

No. 17-BK-4780-LTS

(Jointly Administered)

**[PROPOSED] ORDER GRANTING URGENT MOTION OF
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO
RICO FOR SUSPENSION OF CERTAIN CONFIRMATION DEADLINES**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19- BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Upon the *Urgent Motion of the Financial Oversight and Management Board for Puerto Rico for Suspension of Certain Confirmation Deadlines* [ECF No. _____ in Case No. 17-4780; ECF No. _____ in Case No. 17-3283] (the “Urgent Motion”);² and the Court having subject matter jurisdiction to consider the Urgent Motion and the relief requested therein pursuant to PROMESA Section 306(a); and it appearing that venue in this district is proper pursuant to PROMESA Section 307(a); and due and proper notice of the Urgent Motion having been provided and it appearing that no other or further notice need be provided; and the Court having determined the relief sought in the Urgent Motion is in the best interests of the Debtor, its creditors, and all parties in interest; and the Court having determined the legal and factual bases set forth in the Urgent Motion establish just cause for the relief granted herein, it is **HEREBY ORDERED AS FOLLOWS**:

1. The Urgent Motion is GRANTED as set forth herein.
2. All deadlines established by the Solicitation Procedures Order, the Confirmation Procedures Order, and the Confirmation Hearing Procedures Order are suspended and will remain suspended until new deadlines are set by further order of the Court.
3. This Order resolves ECF No. _____ in Case No. 17-4780 and ECF No. _____ in Case No. 17-3283.

SO ORDERED.

Dated: _____, 2023
San Juan, Puerto Rico

LAURA TAYLOR SWAIN
United States District Court Judge

² Capitalized terms used but not otherwise defined herein have the meanings given to them in the Urgent Motion.

CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Hermann D. Bauer
Hermann D. Bauer